

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHAUN WANZO,
Petitioner,

v.

Case No. 06C1112

STATE OF WISCONSIN,
Respondent.

DECISION AND ORDER

Pro se petitioner Shaun Wanzo, an inmate in the Oneida County Jail, brings this action against the State of Wisconsin under 28 U.S.C. § 2254, seeking the return of \$7,027. Pursuant to Rule 4 of the Rules governing § 2254 Cases, Magistrate Judge William E. Callahan recommended that the petition be dismissed and that petitioner's application to proceed in forma pauperis be denied. Judge Callahan made this recommendation because the relief that petitioner seeks – the return of funds – is unavailable under § 2254. Petitioner objected to the recommendation, and the case was assigned to me for review de novo. 28 U.S.C. § 636(b)(1); see United States v. Raddatz, 447 U.S. 667, 673-76 (1980); see also Delgado v. Bowen, 782 F.2d 79, 81-82 (7th Cir. 1986). Petitioner alleges that the money at issue was unlawfully taken from him by federal agents, unlawfully turned over to a state court and unlawfully transferred by the state court to an alleged charitable organization. However, § 2254 authorizes me to release persons who are in state custody unlawfully, not to address issues of the type that petitioner raises. Therefore, I adopt the magistrate judge's recommendation and dismiss the case.

However, the dismissal shall be without prejudice so that petitioner does not lose any right he might have to challenge his custody in the future.

Petitioner might consider some sort of civil action in state court.

Therefore, for the reasons stated,

IT IS ORDERED that the recommendation of the magistrate judge is adopted, and this case is **DISMISSED WITHOUT PREJUDICE**.

Dated at Milwaukee, Wisconsin this 29 day of July, 2007.

/s _____
LYNN ADELMAN
District Judge